

Court of Common Pleas of Philadelphia County


Trial Division

Civil Cover Sheet

For Prothonotary Use Only (Docket Number)

001491

JULY 2007

PLAINTIFF'S NAME Anthony Cupaiuolo, by his P/N/G Angela Cupaiuolo		DEFENDANT'S NAME Mattel, Incorporated	
PLAINTIFF'S ADDRESS 239 Noah Maple Avenue Lansdowne, PA 19050		DEFENDANT'S ADDRESS 333 Continental Blvd. El Segundo, CA 90245	
PLAINTIFF'S NAME Angela Cupaiuolo, in her own right		DEFENDANT'S NAME Fisher Price Brands	
PLAINTIFF'S ADDRESS 239 Noah Maple Avenue Lansdowne, PA 19050		DEFENDANT'S ADDRESS 636 Girard Avenue East Aurora, NY 14052	
PLAINTIFF'S NAME		DEFENDANT'S NAME Dynacraft BSC, Incorporated	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 2550 Kerner Blvd. San Rafael, CA 94901	
TOTAL NUMBER OF PLAINTIFFS 2	TOTAL NO. OF DEFENDANTS 5	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input type="checkbox"/> Other:		
CASE TYPE AND CODE (SEE INSTRUCTIONS) 2P Product Liability			
STATUTORY BASIS FOR CAUSE OF ACTION (SEE INSTRUCTIONS) N/A			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER) N/A			IS CASE SUBJECT TO COORDINATION ORDER? Yes No <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: Papers may be served at the address set forth below.			
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY Michael T. van der Veen, Esquire		ADDRESS (SEE INSTRUCTIONS) 25 Bustleton Pike Feasterville, PA 19053	
PHONE NUMBER (215) 396-9001	FAX NUMBER (215) 396-8388		
SUPREME COURT IDENTIFICATION NO 75616		E-MAIL ADDRESS mlv@mkats.com	
SIGNATURE 		DATE 8/31/07	

Court of Common Pleas of Philadelphia County

Trial Division

Civil Cover Sheet
(Supplemental Parties)

For Prothonotary Use Only (Docket Number)

001491**JULY 2007**

PLAINTIFF'S NAME	DEFENDANT'S NAME
PLAINTIFF'S ADDRESS	Wal-Mart Stores, Inc.
PLAINTIFF'S NAME	DEFENDANT'S ADDRESS
PLAINTIFF'S ADDRESS	702 SW 8th Street, Bentonville, AR 72716
PLAINTIFF'S NAME	DEFENDANT'S NAME
PLAINTIFF'S ADDRESS	Wal-Mart Stores, Incorporated
PLAINTIFF'S NAME	DEFENDANT'S ADDRESS
PLAINTIFF'S ADDRESS	605 Conchester Highway, Boothwyn, PA 19061
PLAINTIFF'S NAME	DEFENDANT'S NAME
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS
PLAINTIFF'S NAME	DEFENDANT'S NAME
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PLAINTIFF'S NAME	DEFENDANT'S NAME
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS

KATS, JAMISON, VAN DER VEEN AND ASSOCIATES

By: Michael T. van der Veen, Esquire

JURY FEE PAID

Identification No: 75616

Nelson Levin, Esquire

Identification No. 49761

25 Bustleton Pike

MAJOR JURY**001491**

Feasterville, Pennsylvania 19053

(215) 396-9001

Attorneys for Plaintiffs

**ANTHONY CUPAIUOLO, a minor, by
and through his parent and natural
guardian, ANGELA CUPAIUOLO, and
ANGELA CUPAIUOLO, individually
239 Noah Maple Avenue
Lansdowne, PA 19050**

Plaintiffs

vs.

MATTEL, INCORPORATED**333 Continental Boulevard****El Segundo, California 90245-5012****and****FISHER PRICE BRANDS****636 Girard Avenue,****East Aurora, New York, 14052****and****DYNACRAFT BSC, INCORPORATED****2550 Kerner Boulevard****San Rafael, California 94901****and****WAL-MART STORES, INC.****702 SW 8th Street****Bentonville, Arkansas 72716****WAL-MART STORES,****INCORPORATED****605 Conchester Highway****Boothwyn, Pennsylvania 19061****Defendants.****COURT OF COMMON PLEAS****PHILADELPHIA COUNTY****CIVIL ACTION—LAW****DOCKET NO.****JULY 2007****COMPLAINT****ATTEST****JUL 11 2007****D. Savage****NOTICE TO DEFEND****NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you.

You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE.
IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE,

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE.
SI NO TIENE ABOGADO O SI NO TIENE EL DINERO

GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO
FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION
LAWYER REFERRAL AND INFORMATION SERVICE
One Reading Center
Philadelphia, Pennsylvania 19107
Telephone: 215-238-1701

SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O
LLAME POR TELEFONO A LA OFICINA CUYA DIRECCIÓN SE
ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE
PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE FILADELFA
SERVICO DE REFERENCIA E INFORMACION LEGAL
One Reading Center
Filadelfia, Pennsylvania 19107
Telefono: 215-238-1701

KATS, JAMISON, VAN DER VEEN AND ASSOCIATES

By: Michael T. van der Veen, Esquire

Identification No: 75616

Nelson Levin, Esquire

Identification No. 49761

25 Bustleton Pike

Feasterville, Pennsylvania 19053

(215) 396-9001

MAJOR JURY**Attorneys for Plaintiffs**

ANTHONY CUPAIUOLO, a minor, by	:	COURT OF COMMON PLEAS
and through his parent and natural	:	PHILADELPHIA COUNTY
guardian, ANGELA CUPAIUOLO, and	:	
ANGELA CUPAIUOLO, individually	:	CIVIL ACTION—LAW
239 Noah Maple Avenue	:	
Lansdowne, PA 19050	:	DOCKET NO.
Plaintiffs	:	
vs.	:	
MATTEL, INCORPORATED	:	COMPLAINT
333 Continental Boulevard	:	
El Segundo, California 90245-5012	:	
and	:	
FISHER PRICE BRANDS	:	
636 Girard Avenue,	:	
East Aurora, New York, 14052	:	
and	:	
DYNACRAFT BSC, INCORPORATED	:	
2550 Kerner Boulevard	:	
San Rafael, California 94901	:	
and	:	
WAL-MART STORES, INC.	:	
702 SW 8th Street	:	
Bentonville, Arkansas 72716	:	
WAL-MART STORES,	:	
INCORPORATED	:	
605 Conchester Highway	:	
Boothwyn, Pennsylvania 19061	:	
Defendants.	:	

COMPLAINT IN CIVIL ACTION
PRODUCTS LIABILITY

1. Plaintiff Angela Cupaiuolo is an adult individual and the parent and natural guardian of Plaintiff, Anthony Cupaiuolo, a minor, residing at 239 Noah Maple Avenue, Lansdowne, Pennsylvania, 19050.

2. Plaintiff Anthony Cupaiuolo is a minor individual residing with his mother and natural guardian, Angela Cupaiuolo, at 239 Noah Maple Avenue, Lansdowne, Pennsylvania, 19050.

3. Defendant Mattel Incorporated is a business entity, company, corporation, proprietorship, partnership and/or limited partnership, and /or fictitiously named entity, existing and/or qualifying under the laws of and conducting business in the Commonwealth of Pennsylvania, with a registered office for the acceptance of service and/or a principal place of business at 333 Continental Boulevard, El Segundo, CA 90245.

4. Defendant Fisher Price Brands is a business entity, company, corporation, proprietorship, partnership and/or limited partnership, and /or fictitiously named entity, and /or subsidiary of Defendant Mattel Incorporated, existing and/or qualifying under the laws of and conducting business in the Commonwealth of Pennsylvania, with a registered office for the acceptance of service and/or a principal place of business at 636 Girard Avenue, East Aurora, New York, 14052.

5. Defendant Dynacraft BSC, Incorporated is a business entity, company, corporation, proprietorship, partnership and/or limited partnership, and /or fictitiously named entity, existing and/or qualifying under the laws of and conducting business in the Commonwealth of Pennsylvania, with a registered office for the acceptance of service and/or a principal place of business at 2550 Kerner Boulevard, San Rafael, California 94901.

6. Defendant Wal-Mart Stores, Inc. is a business entity, company, corporation, proprietorship, partnership and/or limited partnership, and /or fictitiously named entity, existing and/or qualifying under the laws of and conducting business in the Commonwealth

of Pennsylvania, with a registered office for the acceptance of service and/or a principal place of business at 702 S.W. 8th Street, Bentonville, Arkansas 72716.

7. Defendant Wal-Mart Stores, Incorporated s a business entity, company, corporation, proprietorship, partnership and/or limited partnership, and /or fictitiously named entity, existing and/or qualifying under the laws of and conducting business in the Commonwealth of Pennsylvania, with a registered office for the acceptance of service and/or a place of business at 605 Conchester Highway, Boothwyn, Pennsylvania 19061.

8. At all times relevant hereto, Defendant and /or their predecessors, subsidiaries, parent or related companies, jointly and/or severally, contracted with the aforesaid Defendants to engage in the design, manufacture, production, inspection, testing, installation, assembly, marketing, promotion, advertisement, distribution and /or sale of certain products and their component parts including, but not limited to: 4 Inch Hot Wheels Foldable Aluminum Scooter (also commonly referred to as a Razor Scooter), bearing Model Number 8512-31/2005.12.21 and bearing a Serial/Identification Number YY051234447, along with a Retail Bar Code Number 0-878651231-8.

9. Prior to July 10, 2006, Defendants Wal-Mart Stores, Inc. and/or Wal-Mart Incorporated, located at 605 Conchester Highway, Boothwyn, Pennsylvania, marketed, promoted, distributed and /or sold a 4 Inch Hot Wheels Foldable Aluminum Scooter (also commonly referred to as a Razor Scooter), bearing Model Number 8512-31/2005.12.21 and bearing a Serial/Identification Number YY051234447, along with a Retail Bar Code Number 0-878651231-8 to Plaintiff Angela Cupaiuolo, parent and natural guardian of Anthony Cupaiuolo, a minor.

10. Prior to July 10, 2006, Defendants, jointly and/or severally engaged in the design, manufacture, production, inspection, testing, installation, assembly, marketing, promotion, advertisement, distribution and /or sale of certain products and their component parts, including but not limited to: 4 Inch Hot Wheels Folding Aluminum Scooter (also commonly referred to as a Razor Scooter), bearing Model Number 8512-31/2005.12.21 and bearing a Serial/ Identification Number YY051234447, along with a Retail Bar Code Number 0-878651231-8, without conforming to the industry standards regarding the design, manufacture, production, inspection, assembly, distribution, sale, and supply of such products and component parts or otherwise making the product safe for its intended use.

11. On or about July 10, 2006, Plaintiff Anthony Cupaiuolo, then age 5 years, was using the aforesaid product for its intended use when suddenly and without warning he fell from the aforesaid product and sustained severe personal injuries to his face and right eye due to contact with the dangerous, unsafe and defective condition of the unguarded, protruding and sharp clamp used to adjust the handlebar height.

12. As a direct and proximate result of the said incident, Minor-Plaintiff Anthony Cupaiuolo has sustained severe injuries and damages which may include, but are not limited to:

- (a) Serious and permanent personal injuries including injury to his right eye, including but not limited to:
orbital blowout fracture;
- (b) Past medical expenses incurred for the diagnosis, treatment and cure of said personal injuries;
- (c) Future medical expenses incurred for the diagnosis, treatment and cure of the said personal injuries;
- (d) Past and future lost earnings;
- (e) Past and future lost earning capacity;
- (f) Past and future pain;

- (g) Past and future suffering;
- (h) Embarrassment and humiliation;
- (i) Disfigurement and scarring;
- (j) Past and future loss of enjoyment of life;
- (k) Other injuries and damages suffered as a natural and probable result of the said personal injuries.

13. As a direct and proximate result of the aforesaid incident, Plaintiff Angela Cupaiuolo, parent and natural guardian of Minor-Plaintiff, has and may continue in the future to incur other financial expenses or losses on behalf of her minor son, which she may otherwise be entitled to recover.

COUNT I

**ANTHONY CUPAIUOLO, A MINOR, BY AND THROUGH HIS PARENT AND
NATURAL GUARDIAN, ANGELA CUPAIUOLO AND ANGELA CUPAIUOLO,
INDIVIDUALLY VS. DEFENDANTS**

Restatement of Torts, Second, Section 402A - Strict Liability

14. Plaintiffs incorporate by reference thereto, paragraphs one through thirteen, inclusive, as though same were set forth herein at length.

15. The injuries and damages of the Plaintiffs were the direct and proximate result of the defective nature, condition, design and/or manufacture of the product within the purview of the Restatement of Torts, Second, Section 402A, in that the product was in a defective condition at all times relevant herein and was dangerous to foreseeable users, such as this minor Plaintiff, using it for ordinary and intended purposes in an ordinary, intended and foreseeable manner.

WHEREFORE, Plaintiffs hereby demand damages from the Defendants Mattel, Incorporated, Fisher Price Brands, Dynacraft BSC, Incorporated Wal-Mart Stores, Inc. and Wal-Mart Stores, Incorporated, individually, jointly and/or severally, in an amount in excess of Fifty Thousand Dollars (\$50,000.00) plus interest, costs and attorney fees.

COUNT II
ANTHONY CUPAIUOLO, A MINOR, BY AND THROUGH HIS PARENT AND
NATURAL GUARDIAN, ANGELA CUPAIUOLO, AND ANGELA CUPAIUOLO,
INDIVIDUALLY VS. DEFENDANTS
Breach of Warranties

16. Plaintiffs incorporate by reference thereto, paragraphs one through fifteen, inclusive, as though same were set forth herein at length.

17. Defendants, individually, jointly and/or severally, expressly warranted in the sale of the aforesaid recreational scooter product to its buyer that said product was safe, merchantable and fit for its intended use and purposes.

18. Defendants implicitly warranted in the sale of the aforesaid recreational scooter product to its buyer that said product was safe, merchantable and fit for its intended use and purposes.

19. The injuries and damages of Plaintiff were the direct and proximate result of the joint and/or several breach of the express and/or implied warranties by Defendants that the aforesaid recreational scooter product was safe, merchantable and fit for its intended uses and purposes in that it did not have any or all of these attributes.

WHEREFORE, Plaintiffs hereby demand damages from the Defendants Mattel, Incorporated, Fisher Price Brands, Dynacraft BSC, Incorporated Wal-Mart Stores, Inc. and Wal-Mart Stores, Incorporated, individually, jointly and/or severally, in an amount in excess of Fifty Thousand Dollars (\$50,000.00) plus interest, costs and attorney fees.

COUNT III
ANTHONY CUPAIUOLO, A MINOR, BY AND THROUGH HIS PARENT AND
NATURAL GUARDIAN, ANGELA CUPAIUOLO AND ANGELA CUPAIUOLO,
INDIVIDUALLY VS. DEFENDANTS

Negligence

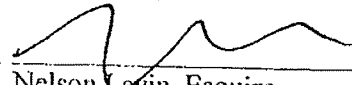
20. Plaintiffs incorporate by reference thereto, paragraphs one through nineteen, inclusive, as though same were set forth herein at length.

21. The injuries and damages of Plaintiffs were the direct and proximate result of the joint and/or several negligence of Defendants which included:

- (a) Failing to provide adequate and appropriate instructions and warnings for the use of the product on the product, on the product packaging and/or product packaging inserts;
- (b) Failing to comply with national safety rules, regulations and standards for effective product designs;
- (c) Failing to abstain from being generally negligent in the design, development, testing, manufacture, installation, assembly, inspection, marketing, promotion, advertising, selling and/or distribution of the product;
- (d) Failing to comply with the applicable statutes, ordinance, rules, regulations and standards regarding safety of the product; and
- (e) Committing or omitting other acts constituting negligence as may first become known or revealed during the pretrial discovery or trial of this case.

WHEREFORE, Plaintiffs hereby demand damages from the Defendants Mattel, Incorporated, Fisher Price Brands, Dynacraft BSC, Incorporated Wal-Mart Stores, Inc. and Wal-Mart Stores, Incorporated, individually, jointly and/or severally, in an amount in excess of Fifty Thousand Dollars (\$50,000.00) plus interest, costs and attorney fees.

KATS, JAMISON, van der VEEN & ASSOCIATES

By: 
Nelson Levin, Esquire
(Attorney for Plaintiffs)

Date: June 31, 2007

VERIFICATION

Angela Cupaniolo PNC Anthony verifies that she/he is the Plaintiff, that the facts set forth in the foregoing Complaint in Civil Action are true and correct to the best of her/his knowledge, information and belief.

This statement is made subject to the penalties of 18 PA C.S. Section 4904 relating to the unsworn falsification to authorities.

X Angela R Cupaniolo PNC
Anthony Cupaniolo

Date: 6/31/07